

Remarks

Applicant has amended pages 7 and 8 to more clearly point out the invention. Applicant also has amended claims 1, 2 and 7 accordingly. New claim 23 also has been added. Applicant also has corrected the informality in line 2 of claim 4.

These amendments are not the addition of new matter. Accordingly, Applicant respectfully asks the Examiner to enter the amendments.

Applicant notes with appreciation the Examiner's withdrawal of the sub species election requirement for Species IV and V.

The Applicant wishes to thank the Examiner for his attention to this application.

The Applicant has noted that the Examiner's comments with respect to claims 12 to 14 pursuant to 37 CFR 1.142(b) as being drawn to a non-elected species. The Applicant respectfully draws to the attention of the Examiner that claims 19 to 22 were also withdrawn without traverse in the reply filed on April 27, 2006. The Examiner is requested to acknowledge this election.

The Applicant thanks the Examiner for pointing out the typographical error on claim 4 and submits that the error has been remedied in the amended claim 4 submitted herewith.

The Examiner has objected to claims 1 to 4 and 6 to 11 presently on file

under 35 U.S.C. §102(b) and to claim 5 presently on file under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,256,007 (Allen). The objections are respectfully traversed.

In response to the objection, The Applicant wishes to bring to the Examiner's attention the fact that the Ground Support System disclosed by Allen is inherently different from the teachings of the present invention. Accordingly, the Applicant respectfully requests that claims 1 to 4 and 6 to 11 be reconsidered having regard to the following comments.

Allen teaches a ground support system for providing a stabilizing surface in conjunction with loose soil. The system disclosed by Allen is purposed for use in agricultural applications, such as stalls wherein horses, cows or bulls and the like are kept. Allen's system provide support for dirt or sand used in the stall resisting movement of the dirt or sand and at the same time providing sufficient drainage to maintain sanitary conditions and permitting cleaning and sanitizing (see column 5, lines 21 to 27). This system is significantly different from the Air Gap Spacer of the present application. Nowhere does Allen teach or suggest that the claimed ground support system can be applied as an air gap spacer for use in building construction for providing spacing between an outer wall surface of a building under construction and an exterior cladding material, which is the subject matter of the present application. The Applicant firmly submits that the teachings of Allen are

not relevant to the subject matter of the present application and do not form persuasive grounds for anticipation and/or obviousness-based objections.

Furthermore, the conical projections (20) extending from the bottom side (18) of the sheet (10) taught by Allen are open-ended (23) to enhance fluid flow (see column 4, lines 14 to 19). On the other hand, the protrusions (18) of the present invention are not open-ended and are designed to protect the exterior wall of the building from water and moisture and to facilitate water drainage away from the exterior wall. Thus, the conical projection structure taught by Allen would, in fact, be counter-productive and fail to achieve the results of the present invention. Therefore, the Applicant respectfully requests the Examiner to withdraw his objections based on the teachings of Allen.

The Examiner has objected to claims 1 and 15 to 18 presently on file under 35 USC § 102(b) as being anticipated by United States Patent Application Publication No. US 2001/0054263 (Coulton). In response, the Applicant has carefully studied the prior art reference and firmly submits that the reference fails to provide teachings that would make any one of the claims submitted herewith anticipated on the claim date.

With regard to amended claim 1 presented herewith, the Applicant submits that the cited prior art reference does not teach or suggest of an air gap spacer comprising a planar surface having a plurality of cutouts as defined in amended

claim 1: In particular, the spacer taught by Coulton comprises a continuous indeterminate-length, roll-form web of thermoplastic material having a front face and a rear face. Coulton's spacer additionally has a first and second set of hollow spacer elements that are integrally formed on the web and which project outwardly from the front and rear face, respectively, of the spacer. Furthermore, the spacer elements have an apex portion such that a drainage path and air space is created extending adjacent to and along the respective front and rear face of the spacer. In addition, apertures are formed in the apex portion (See para 0023, 0025, 0027 and claim 1).

In contrast, the air gap spacer defined in amended claim 1 comprises a planar surface having a plurality of cutouts and a plurality of mutually spaced protrusions of substantially uniform height depending from one side of the planar surface. There are no apertures at the apex portions of the protrusions. The claimed air gap spacer has several advantages over that the spacer taught by Coulton.

The Coulton spacer has an egg-carton shape and provides what may be considered a "closed" air gap. The apertures 36 offer a small area for building breathing purposes and each cone-shaped spacer element 24 acts a funnel. When installed, a substantial portion of the openings will be closed due to compression against the sheathing (on the exterior surface of the building wall)

and the exterior cladding. This may lead to situation wherein sudden positive and negative air pressure changes may arise when each cone (spacer element), acting as an individual air chamber, has access to one side of the roll and not both sides.

An uneven air pressure may result in loss of effective performance and stability of the spacer.

The air gap spacer defined by amended claim 1 comprises a plurality of cutouts. The cutouts effectively circumvent the problem of sudden positive and negative pressure changes thereby ensuring even air pressure on either side of the spacer. Furthermore, by having a plurality of cutouts in the spacer, a significant amount of material is saved without compromising on quality, performance, and stability. The air gap spacer of the present invention is thus economical, environmentally friendly and may be installed by a single person.

Accordingly, the cited Coulton reference does not teach nor imply the air gap spacer of the present invention, and the Applicant thus believes that the subject matter of the presently amended claims is inventive and novel. The Applicant requests that the Examiner reconsider his objection to claim 1 and dependent claims 15 to 18 under the authority of 35 USC §102(b). In addition, the Applicant has withdrawn claims 5, 6 and 16. Thus, the Examiner's objections thereto are rendered moot.

Furthermore, the Applicant submits new claim 23 defining a preferred

embodiment of the present invention. The Applicant has effected revisions to the description in order to ensure harmony between the teachings of the description and the scope of the claims. The Applicant submits that no new subject matter has been added by virtue of these revisions and refinements. It is believed that the application is now in condition for allowance and early action in that respect is courteously solicited.

Accordingly, Applicant respectfully asks claims 1 – 11, 15 – 18 and 23 be allowed and that this case be passed to issue.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB  
& PORCELLO CO., L.P.A.



Patrick P. Pacella  
Reg. No. 25,463

P.O. Box 916  
Toledo, Ohio 43697  
Ph: (419) 243-1294  
Fax (419) 243-8502  
PPP/kab